

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Three Angels Broadcasting Network, Inc.)	
)	File Number: EB-06-LA-129
Licensee of Station K43FO)	
Las Vegas, Nevada)	NAL/Acct. No.: 200732900004
Facility ID # 14302)	FRN: 0003716198

FORFEITURE ORDER

Adopted: September 10, 2007**Released: September 12, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of six thousand, four hundred dollars (\$6,400) to Three Angels Broadcasting Network, Inc. ("3ABN"), licensee of Class A television station K43FO, in Las Vegas, Nevada, for repeated violation of Section 11.35(a) of the Commission's Rules ("Rules")¹ by failing to ensure the operational readiness of K43FO's Emergency Alert System ("EAS") equipment. On January 31, 2007, the Enforcement Bureau's Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$8,000 to 3ABN for failing to ensure the operational readiness of K43FO's Emergency Alert System ("EAS") equipment.² In this *Order* we consider 3ABN's arguments that the facts of the case are in dispute and that the forfeiture should be rescinded because 3ABN immediately took steps to correct the EAS issues. We also consider 3ABN's request that we reduce the forfeiture based on its history of compliance with the Rules.

II. BACKGROUND

2. On May 16, 2006, in the course of a routine EAS inspection, an agent of the Enforcement Bureau's Los Angeles office met with 3ABN's local technical representative in Las Vegas who told the Los Angeles agent that the K43FO EAS receivers could not receive their assigned local primary ("LP") stations, a situation that the technical representative had made 3ABN aware of a year earlier. On May 17, 2006, the Los Angeles agent inspected the EAS equipment installed at the K43FO transmitter site in Las Vegas. The inspection revealed that the K43FO EAS receivers were not receiving intelligible transmissions from their assigned EAS LP stations serving the Las Vegas area, and there were no local logs or other evidence that the EAS equipment had been receiving and/or retransmitting tests or alerts from the LP stations. The inspection also revealed that the K43FO EAS equipment was capable of originating a manual weekly test.

3. On July 13, 2006, the Los Angeles Office sent a Letter of Inquiry ("LOI") to 3ABN regarding the operational readiness of the K43FO EAS equipment. The Los Angeles Office also requested copies of the K43FO EAS logs documenting the functionality of the EAS equipment, for the

¹ 47 C.F.R. § 11.35(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900004 (Enf. Bur., Western Region, Los Angeles Office, released January 31, 2007).

period January through May, 2006. On July 20, 2006, 3ABN responded to the LOI, stating that “[d]ue to various technical reasons K43FO was unable to unreliably [sic] receive the LP station tests.” 3ABN did not provide the requested EAS logs.

4. On August 7, 2006, a Los Angeles agent contacted a 3ABN Engineer concerning the K43FO EAS equipment and its operational readiness. The engineer stated that he had no records concerning the K43FO EAS equipment but indicated to the agent that the EAS equipment most likely failed in the Fall of 2005, when the landlord of the site moved the K43FO transmitter.

5. On January 31, 2007, the Enforcement Bureau’s Los Angeles Office issued the *NAL* in the amount of \$8,000 to 3ABN for violating Section 11.35(a) of the Rules. 3ABN filed a response (“*Response*”) to the *NAL* on March 19, 2007.³ In its *Response*, 3ABN disputes the facts presented in the *NAL*, and argues that the forfeiture should be rescinded because 3ABN immediately took steps to correct the EAS issues. 3ABN also requests that we reduce the forfeiture based on its history of compliance with the Rules.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”).⁶ In examining 3ABN’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

7. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station’s log why any required tests were not received and when defective equipment is removed and restored to service.⁸

8. Section 11.61(a)(1) and (2) of the Rules requires broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.⁹ The requirement that stations monitor, receive and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster. Appropriate entries must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840, indicating reasons why

³ 3ABN requested and received an extension of time to respond to the *NAL*.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 11.35(a) and (b).

⁹ The required monthly and weekly tests are required to conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055 (2002).

any tests were not received or transmitted.¹⁰

9. 3ABN disputes the facts as described in the *NAL*. First, 3ABN states it first became aware of the “alleged EAS problem at K43FO” on May 16, 2006 when the Los Angeles agent met with a “technical representative” of the station. 3ABN argues that the individual the agent met with was not a technical representative and includes a declaration with its *Response* in which this individual states that he never made the statements described in the *NAL* concerning the K43FO EAS equipment. 3ABN argues that the agent should have talked with the station’s chief operator, who was hired officially a few days after the Los Angeles agent’s inspection, and who had been acting informally in that capacity prior to the time of the inspection. According to the agent’s records and case report, the “technical representative” that he spoke with on May 16, 2006, was in fact the individual 3ABN asserts was the appropriate person the agent should have spoken with and indeed, was the same individual who was acting unofficially for 3ABN as the chief operator and later hired as the chief operator of K43FO. We note that the *Response* contains no declaration from the K43FO chief operator.¹¹

10. 3ABN also disputes that the K43FO EAS logs were unavailable at the time of the May 16, 2006, inspection, and provides a copy of those logs. We note that not only was the Los Angeles agent unable to obtain a copy of these logs at the time of the inspection, 3ABN failed to produce a copy, as requested, to the Los Angeles Office in response to the LOI. Consequently, we affirm the Los Angeles Office’s determination that the EAS logs were unavailable. The newly discovered logs consist of four pages of handwritten notes, covering EAS and other technical inspections at the station, from October 7, 2005 to May 21, 2006. There are no entries or tapes concerning the receipt and transmission of the RWT’s and RMT’s until May 21, 2006, with the exception of a RWT received May 9, 2006, and a March 25, 2006, entry which reads “no monthly [RMT] received, sent monthly manual.”¹² An April 15, 2006, entry reads “email to Dan about EAS paper and reception problems.” The rest of the logs include several pages of tapes and logs from May 21, 2006 through June, 2006, and then automated logs from September 2006 through January 2007. In his May 21, 2006 report, the K43FO chief engineer writes that he “went to verify reception and noted that neither receiver [sic] was picking up the lp station.” In fact, 3ABN acknowledges in its *Response* that at the time of the May 16, 2007, inspection, K43FO was receiving neither the LP-2 station nor the LP-1 station tests and that on May 21, 2006, because of repairs made by the chief engineer, the EAS equipment was able to receive the LP-2 station, but was unable to receive the LP-1 station until the end of July 2006.

11. 3ABN argues that when it became aware of the deficiencies in the K43FO EAS system in May 2006, it took immediate steps to remedy those problems. It argues that it succeeded in remedying those problems within the sixty period allotted by Section 11.35(b) of the Rules, which states that “[i]f the EAS Encoder or Decoder becomes defective, the broadcast station . . . may operate without the defective equipment pending its repair or replacement for 60 days without further FCC authority.”¹³ 3ABN argues that because the station’s EAS problems were addressed as soon as possible upon discovery, the forfeiture should be rescinded. We disagree. 3ABN apparently only took action regarding the lack of operational readiness of the K43FO EAS equipment because of the Los Angeles agent’s inspection on May 16, 2006.¹⁴

¹⁰ 47 C.F.R. §§ 73.1820 and 73.1840.

¹¹ There were two conversations conducted by the Los Angeles agent, one on May 16, 2006, with the technical representative for 3ABN, who later became the chief operator for K43FO, and one on May 17, 2006, with a different individual, who was not the technical representative, and who signed a declaration for the 3ABN *Response*.

¹² The engineer from 3ABN who told the Los Angeles agent, on August 7, 2006, that the EAS equipment most likely failed in the Fall of 2005 recants that statement in a declaration included in the *Response*, and now states that his records show that he personally verified the operation of the system on October 5, 2005.

¹³ 47 C.F.R. § 11.35(b).

¹⁴ We note that 3ABN has produced no evidence that it made efforts to repair or replace the K43FO EAS equipment after the March 25, 2006, entry in its log that no RMT was received.

3ABN maintains that its lack of operational readiness prior to May 16, 2006, did not extend for many months, as implied by the NAL. However, according to its EAS logs, 3ABN has no entries concerning the receipt or transmission of EAS RMTs from October 7, 2005, until May 31, 2006, with the exception of the entry that noted that no RMT was received on March 25, 2006. Section 11.61 of the Rules requires all RMT and RWT tests to “conform with the procedures in the EAS Operating Handbook.”¹⁵ For RMTs, the FCC EAS TV Handbook instructs stations, to “[l]og receipt and transmission of the test.”¹⁶ Prior to the May 21, 2006, there is no evidence that any RMTs were received or transmitted by K43FO as early as October 7, 2005, the first date entered in the proffered EAS logs. While 3ABN offers many excuses for its apparent lack of logs, including its reliance on volunteers to change the ribbon in the EAS equipment, its inability to obtain paper because of delivery problems, and a leak in the roof which ostensibly damaged some of its records, we find that none of them support a finding that the EAS equipment was operational. Had 3ABN been able to produce records showing that the K43FO EAS equipment was operational for less than 60 days prior to the repairs performed by the chief engineer on May 21, 2006, and that 3ABN was taking action to repair or replace the EAS equipment prior to the Los Angeles agent’s inspection, then we would agree that Section 11.35(b) may apply to their situation. However, 3ABN is asking us to find that a licensee may take advantage of a sixty-day period to repair or replace its non-operational EAS equipment and to begin the 60 days when the licensee is notified of the violation by the Commission, regardless of when the problem actually began. We decline to do so. 3ABN’s proposed interpretation would be particularly problematic in the instant case, where the licensee has not maintained the proper logs and records required by the Rules and the FCC EAS TV Handbook so that the Commission can ascertain when the lack of operational readiness began. Consequently, we find that Section 11.35(b) does not apply to this situation and that 3ABN repeatedly failed to ensure the operation readiness of the K43FO EAS equipment.¹⁷

12. 3ABN also asks that the forfeiture amount be reduced based on its overall history of compliance with the Commission’s Rules. We have reviewed our records and we concur. Consequently, we reduce 3ABN’s forfeiture amount from \$8,000 to \$6,400.

13. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$6,400 is warranted.

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Three Angels Broadcasting Network, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,400 for repeatedly violating Section 11.35(a) of the Rules.¹⁸

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

¹⁵ 47 C.F.R. § 11.61(a).

¹⁶ *FCC EAS TV Handbook* at p. 30.

¹⁷ Additionally, because the repairs performed by the chief engineer occurred only after the Los Angeles agent’s inspection, we find that they cannot be a basis to reduce the forfeiture amount. The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture. *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹⁸ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35(a).

Act.¹⁹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.²⁰

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Three Angels Broadcasting Network, Inc., at its address of record, and David M. Silverman, Esquire, Davis Wright Tremaine, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 C.F.R. § 1.1914.